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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 150209121-5121-01]

RIN 0648-XD760

Endangered and Threatened Wildlife; Initial Finding on a Petition to Identify and Delist a Saint John River Distinct Population Segment of Shortnose Sturgeon under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Initial petition finding; request for information.

SUMMARY: We (NMFS) announce an initial finding on a petition to identify the Saint John River population of shortnose sturgeon (*Acipenser brevirostrum*) as a distinct population segment (DPS) and delist this DPS from the Endangered Species Act. We have reviewed the petition, the references provided by the petitioner, and information readily available in our files, and we find that the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Therefore, we will conduct a status review of the shortnose sturgeon to determine if the petitioned actions are warranted. To ensure that our

review is comprehensive, we are soliciting scientific and commercial information pertaining to this petition from any interested party.

DATES: Information and comments on the subject action must be received by [*insert date 60 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments, information, or data on this document, identified by the code NOAA-NMFS-2015-0040, by either of the following methods:

- *Electronic Submissions:* Submit all electronic comments via the Federal eRulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0040, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous), although submitting comments anonymously will prevent us from contacting you if we have difficulty retrieving your submission.

A copy of the petition and related materials are available upon request from the Director, Office of Protected Resources, 1315 East West Highway, Silver Spring, MD 20910, or online at: www.nmfs.noaa.gov/pr/species/fish/shortnose-sturgeon.html.

FOR FURTHER INFORMATION CONTACT: Lisa Manning, Office of Protected Resources, 301-427-8466.

SUPPLEMENTARY INFORMATION:

Background

On September 24, 2014, we received a petition from Dr. Michael J. Dadswell, Dr. Matthew K. Litvak, and Mr. Jonathan Barry regarding the population of shortnose sturgeon (*Acipenser brevirostrum*) native to the Saint John River in New Brunswick, Canada. The petition requests that we identify the Saint John River population of shortnose sturgeon as a distinct population segment (DPS) and contemporaneously delist this DPS from the Endangered Species Act.

Acipenser brevirostrum was originally listed as an endangered species throughout its range by the U.S. Fish and Wildlife Service (USFWS) on March 11, 1967, under the Endangered Species Preservation Act (ESPA, 32 FR 4001). Shortnose sturgeon remained on the endangered species list when the U.S. Congress replaced ESPA by enacting the Endangered Species Conservation Act of 1969, which was in turn replaced by the Endangered Species Act of 1973 (ESA, 16 U.S.C. 1531 *et seq.*). NMFS subsequently assumed jurisdiction for shortnose sturgeon under a 1974 government reorganization plan (39 FR 41370, November 27, 1974). In Canada, the shortnose sturgeon falls under the jurisdiction of the Department of Fisheries and Oceans (DFO) and was listed as a species of “special concern” under the Species at Risk Act (SARA) in 1980. The status under SARA was maintained following a 2005 assessment (COSEWIC 2005). Shortnose sturgeon is also listed under Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna (CITES).

Statutory, Regulatory and Policy Provisions

Section 4(b)(3)(A) of the ESA of 1973, as amended (U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish the finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When we find that substantial scientific or commercial information in a petition indicates that the petitioned action may be warranted (a “positive initial finding” or “positive 90-day finding”), we are required to promptly commence a review of the status of the species concerned, which includes conducting a comprehensive review of the best available scientific and commercial information. Within 12 months of receiving the petition, we must conclude the review with a finding as to whether, in fact, the petitioned action is warranted (50 CFR 424.14(b)(3)). Because the finding at the 12-month stage is based on a significantly more thorough review of the available information, a “may be warranted” finding at this stage does not prejudge the outcome of the status review.

Under the ESA, a listing determination may address a “species,” which is defined to also include subspecies and, for any vertebrate species, any distinct population segment that interbreeds when mature (16 U.S.C. 1532(16)). A joint policy issued by NMFS and the U.S. Fish and Wildlife Service (USFWS) clarifies the interpretation of the phrase “distinct population segment,” or DPS for the purposes of listing, delisting, and reclassifying a species under the ESA (“DPS Policy,” 61 FR 4722, February 7, 1996). The DPS Policy identifies two criteria for determining whether a population is a DPS: (1) the population must be “discrete” in relation to

the remainder of the taxon (species or subspecies) to which it belongs; and (2) the population must be “significant” to the remainder of the taxon to which it belongs. Congress has instructed the Secretary to exercise authority to recognize DPS’s “* * * sparingly and only when the biological evidence indicates that such action is warranted.” (Senate Report 151, 96th Congress, 1st Session). In a recent decision, the United States District Court for the District of Columbia held that the ESA does not permit identification of a DPS solely for purposes of delisting. *See Humane Soc’y v. Jewell*, No. 13-186 (BAH), – F.3d. –, 2014 WL7237702 (D.D.C. December 19, 2014) (Western Great Lakes gray wolves). Because this is a single district court decision and may be appealed, we conclude it does not compel us to deny the present petition; however, we note that it highlights potential complications associated with the petitioned action.

A species, subspecies, or DPS is “endangered” if it is in danger of extinction throughout all or a significant portion of its range, and “threatened” if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, the determination of whether a species is threatened or endangered shall be based on any one or a combination of the following five section 4(a)(1) factors: the present or threatened destruction, modification, or curtailment of habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms; and any other natural or manmade factors affecting the species’ existence (16 U.S.C. 1533(a)(1); 50 CFR 424.11(c)).

Under section 4(a)(1) of the ESA and the implementing regulations at 50 CFR 424.11(d), a species shall be removed from the list if the Secretary of Commerce determines, based on the

best scientific and commercial data available after conducting a review of the species' status, that the species is no longer threatened or endangered because of one or a combination of the section 4(a)(1) factors. The regulations provide that a species listed under the ESA may be delisted only if such data substantiate that it is neither endangered nor threatened for one or more of the following reasons:

(1) *Extinction*. Unless all individuals of the listed species had been previously identified and located, and were later found to be extirpated from their previous range, a sufficient period of time must be allowed before delisting to indicate clearly that the species is extinct.

(2) *Recovery*. The principal goal of the USFWS and NMFS is to return listed species to a point at which protection under the ESA is no longer required. A species may be delisted on the basis of recovery only if the best scientific and commercial data available indicate that it is no longer endangered or threatened.

(3) *Original data for classification in error*. Subsequent investigations may show that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error (50 CFR 424.11(d)).

A determination whether to revise a species-level listing to recognize one or more DPSs in place of a species-level listing involves a judgment as to which approach for managing the species best furthers the purposes of the ESA. We will make that determination prior to making a final finding on the petition.

At the initial finding stage on a petition to list, delist, or reclassify a species, the statute requires that we determine whether the petition has presented substantial scientific or

commercial information indicating that the petitioned action may be warranted. *See* ESA section 4(b)(3)(A) (16 U.S.C. 1533(b)(3)(A)). ESA-implementing regulations issued jointly by NMFS and the USFWS (50 CFR 424.14(b)(1)) define “substantial information” as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. When evaluating whether substantial information is contained in a petition, we must consider whether the petition: (1) clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

At the initial finding stage, we evaluate the petitioner’s request based upon the information in the petition, including references provided, and the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioner’s sources and characterizations of the information presented if they appear to be based on accepted scientific principles, unless we have specific information in our files which indicates that the petition’s information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the initial finding stage, so long as it is

reliable and a reasonable person would conclude that it supports the petitioner's assertions. In other words, conclusive information indicating that the species may meet the ESA's requirements for listing is not required to make a positive initial finding.

Many petitions identify risk classifications made by other organizations, such as the International Union for Conservation of Nature (IUCN), the American Fisheries Society, or NatureServe, as evidence of extinction risk for a species. Risk classifications by other organizations or made under other Federal or state statutes may be informative, but such classification alone may not provide the rationale for making an initial finding under the ESA. For example, as explained by NatureServe, their assessments of a species' conservation status do "not constitute a recommendation by NatureServe for listing under the U.S. Endangered Species Act" because NatureServe assessments "have different criteria, evidence requirements, purposes and taxonomic coverage than government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide" (<http://www.natureserve.org/prodServices/statusAssessment.jsp>). Thus, when a petition cites such classifications, we will evaluate the source of information that the classification is based upon in light of the standards of the ESA and our policies as described above.

Species Description

The shortnose sturgeon is a bony fish (Class Osteichthyes) that retains many primitive physical characteristics that reflect its ancient lineage. Distinctive features include a protective armor of bony plates called "scutes" that extend longitudinally from the base of the skull to the caudal peduncle; a subterminal, protractile tube-like mouth; and chemosensory barbels. The general body shape is cylindrical, tapering at the head and caudal peduncle, and the upper lobe of

the tail is longer than lower lobe. Shortnose sturgeon vary in color but are generally dark brown to olive or black on the dorsal surface, lighter along the row of lateral scutes, and nearly white on the ventral surface. Adults have no teeth but possess bony plates in the esophagus that are used to crush hard prey items (Vladykov and Greeley 1963; Gilbert 1989). The skeleton is almost entirely cartilaginous with the exception of some bones in the skull, jaw and pectoral girdle. Maximum reported length is 1.43 m (total length, TL) and maximum reported weight is 23 kg (Dadswell 1984). Growth rates and maximum size display clinal variation, with the fastest growth rates and smallest maximum sizes occurring in southern populations. Shortnose sturgeon are benthic feeders, and their diet typically consists of small insects, crustaceans, mollusks, polychaetes, and small benthic fishes (McCleave *et al.* 1977; Dadswell 1979; Marchette and Smiley 1982; Dadswell *et al.* 1984; Moser and Ross 1995; Kynard *et al.* 2000; Collins *et al.* 2002).

Shortnose sturgeon occur along the East Coast of North America in rivers, estuaries, and marine waters. The current species' range is thought to extend from the Saint John River in New Brunswick, Canada, south to the St. Johns River, Florida (NMFS 1998). Shortnose sturgeon are “anadromous,” meaning they are born in freshwater, migrate to the ocean, then migrate back into freshwater as adults to spawn. However, some shortnose sturgeon populations rarely leave their natal river or associated estuary.

Shortnose sturgeon are relatively long-lived and slow to mature. Female sturgeon can live up to 67 years, but males seldom exceed 30 years of age. Males and females mature at about the same length, around 1.5-1.8 feet (45-55 cm), throughout their range. However, age at maturity varies across the range due the clinal variation in growth rates. Shortnose sturgeon also exhibit

sexually dimorphic growth patterns across latitude: males mature at 2-3 years in Georgia and at 10-11 years in the Saint John River; females mature at 4-5 years in Georgia and at 12-18 years in the Saint John River (NMFS 2010). In general, males are thought to spawn every other year, but may spawn annually in some rivers (Kieffer and Kynard 1996; NMFS 1998). Females appear to spawn less frequently - approximately every three years to five years (Dadswell 1979).

Analysis of the Petition

The petition requests that we identify the Saint John River shortnose sturgeon (SJRSS) as a DPS and make a finding that this DPS does not meet the definition of threatened or endangered under the ESA. In effect, the petition requests the delisting of the SJRSS, which is currently part of the range-wide listing of shortnose sturgeon at the taxonomic level of species. The administrative actions requested in the petition are clear, and the petition is supported by a detailed narrative justification and appropriate references. The petition provides information regarding the status of, and threats to, the SJRSS. The petition does not request any DPS delineations or change in ESA status for the remainder of the species, and does not provide a discussion of the abundance, distribution, status or threats to shortnose sturgeon within the U.S. portion of the species' range. The Petitioners state that while they understand their petition may "trigger a range-wide status review of shortnose sturgeon," they "respectfully request that the designation of the SJRSS population be treated independently and published on its own merits and schedule."

As stated previously, to be considered a DPS, a population must be both discrete from other populations of the species and significant to the species as a whole (61 FR 4722, February

7, 1996). Under the DPS Policy, a population may be considered “discrete” if it satisfies either one of the following conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA.

The petition states that the SJRSS is markedly separated from other populations as a result of “geography, range, and physical constraints.” The petition does not specify, nor are we aware of, any “physical constraints” that preclude mixing of the Saint John River (SJR) population with other populations. However, the petition and references in our files suggest that there is no, or only limited, spatial overlap in the range of shortnose sturgeon from the SJR and rivers just to the south in Maine (e.g., Kennebec, Androscoggin and Penobscot rivers). Separation of the SJR population from other shortnose populations is also supported by genetic data, which indicate limited interbreeding among some river populations. For example, Wirgin *et al.* (2009) assessed genetic differentiation among shortnose sturgeon from 14 river systems by comparing frequencies of mitochondrial DNA (mtDNA) control region haplotypes. The results of this analysis indicate that although 6 of 8 haplotypes in the SJR sample (N= 42 fish) are shared with other Gulf of Maine river samples, the SJR sample has significantly different haplotype frequencies than the other Gulf of Maine rivers (Wirgin *et al.* 2009). Female-mediated

gene flow between the Penobscot River and the Saint John River was also estimated to occur at a low rate – only about 2 migrants per generation (Wirgin *et al.* 2009). A more recent study by King *et al.* (2014) using nuclear DNA provides additional indication that the SJRSS may be discrete from other river populations. King *et al.* (2014) used multiple approaches (principle component analysis and Bayesian clustering) to analyze data for 11 microsatellite loci for shortnose sturgeon from 17 sample populations (N= 561 total fish), including 25 fish from the SJR. The results suggest the existence of three metapopulations (Northeast, Mid-Atlantic, and South Atlantic), each with a different degree of genetic sub-structuring. The Northeast metapopulation, which encompasses the Merrimack, Androscoggin, Kennebec, Penobscot and Saint John rivers, was shown to have a moderate degree of differentiation into three groups: Merrimack, Androscoggin/Kennebec/Penobscot, and Saint John River. Estimates of the effective number of migrants per generation were very low among the three metapopulations (average ranged between 0.89 - 1.89), but were much higher within each metapopulation. For the Saint John River in particular, the estimated effective number of migrants per generation with the other rivers within the Northeast metapopulation ranged from 2.25- 3.43 (King *et al.* 2014). Overall, we find that the SJRSS may be discrete from other populations based on the existing genetic data.

The petition also asserts that the SJRSS can be considered “discrete,” because it is delimited by the U.S.-Canada border, on either side of which the species experiences significant differences in the control of exploitation, management of habitat, conservation status, and regulatory mechanisms. In support of this assertion, the petition points to the differing conservation status that shortnose sturgeon has under the ESA in the United States and the

SARA in Canada. The shortnose sturgeon is listed as “endangered” under the ESA, and the SJRSS is listed as “special concern” under the SARA. Resulting differences include that under the ESA, all “take” of endangered species such as the shortnose sturgeon is prohibited, with take being defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct” (16 U.S.C. 1532(19)); whereas, in Canada, under the Fisheries Act, all means of killing SJRSS are prohibited except for fishing (R.S.C.1985,c. F-14), which apparently results in virtually zero mortality due to conservative size restrictions on retention of shortnose sturgeon (COSEWIC 2005). Certain provisions of the ESA apply throughout the range of shortnose sturgeon to prohibit activities undertaken by persons subject to U.S. jurisdiction. See 16 U.S.C. 1538(a)(1)(A), (D) – (F). The petition does not provide additional information to clarify how the differences in the control of exploitation or regulation of the species within the two countries translate into meaningful differences for shortnose sturgeon or its habitat, nor does it explain how the management differences are significant with respect to section 4(a)(1)(D) of the ESA. We find that, while there is insufficient support to use the international boundary as a potential basis for considering the SJRSS “discrete,” the petition does provide sufficient information to indicate that the SJRSS may be discrete based on biological data; and therefore, we proceeded to evaluate information presented in the petition and the cited references with respect to the second criterion of the DPS Policy.

Under the DPS Policy, if a population segment is found to be discrete, then its biological and ecological significance to the taxon to which it belongs is evaluated. This consideration may include, but is not limited to: (1) persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that the loss of the discrete population

segment would result in a significant gap in the range of a taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; and (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics (61 FR 4722, February 7, 1996).

The petition states that the SJRSS meets the “significance” criterion of the DPS Policy on the basis of all four of the considerations listed in the policy. First, the petition asserts that the SJRSS persists in a unique ecological setting, because it occurs at the northern extreme of the species’ range. Second, the petition states that loss of this population would result in a significant gap in the range of the species, and, third, that the SJRSS is the “only known surviving natural occurrence of this DPS taxon in its historic range.” Lastly, the petition states that the SJRSS differs markedly from other populations of shortnose sturgeon in its genetic characteristics.

We agree that the SJRSS may have markedly different genetic characteristics from other shortnose sturgeon populations, because it has some morphological, behavioral, and genetic differences from other populations. We do not, however, find sufficient information in the petition or cited references to suggest that the riverine, estuarine, or marine habitats of the SJRSS represent a unique ecological setting for the taxon. Supporting information provided in the petition pertained to the life history and habitat use patterns of Atlantic salmon and the Gulf of Maine region; this information is not particularly relevant or explanatory with respect to the uniqueness of SJRSS habitat or shortnose sturgeon. We also find relatively limited support in the petition and references provided to suggest that the loss of this particular population, which

occurs at the northernmost portion of the species' range, would result in a significant gap in the species' range. The species is broadly distributed along the East Coast of North America and highly mobile; furthermore, estimated rates of migration are higher among rivers within the northeast region versus the mid-Atlantic region (King *et al.* 2014). Lastly, we find no support for the assertion that the SJRSS is the only surviving natural occurrence of shortnose sturgeon within its historical range. Shortnose sturgeon are present in at least 42 coastal rivers within the species' historical range (NMFS 2010). We also note that the terms "taxon" and "historical range" in the relevant context of the DPS Policy refer to the larger taxonomic entity, not the DPS under evaluation, as may have been assumed by the Petitioners.

Overall, we conclude that the information presented in the petition and supporting references suggests that the SJRSS may meet the "discreteness" and the "significance" criteria of the DPS Policy and thus may qualify as a DPS. Therefore, we proceeded to review the petition and information readily available in our files to evaluate whether this potential DPS should continue to be protected under the ESA.

The status of the SJRSS was most recently reviewed in 2005 by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC), which is the official scientific body established under SARA responsible for assessing extinction risk of wildlife species in Canada. This most recent assessment concluded that the status of the SJRSS had not changed, and that the population still warranted a status of "special concern (SC)," which is defined under SARA as "a wildlife species that may become a threatened or endangered species because of a combination of biological characteristics and identified threats" (S.C. 2002, c. 29). The 2005 COSEWIC assessment also indicated that the SJRSS met the criterion for "threatened" under SARA based

on criterion D2 (i.e., Canadian population with a very restricted index of area of occupancy or number of locations, based on presence in only one river) but was classified as SC because there were “no immediate threats” (COSEWIC 2005). The petition asserts that the SC classification under SARA indicates the SJRSS does not meet the definition of threatened or endangered under the ESA, and that the SC status under SARA is “substantially similar” to the non-regulatory “species of concern” designation that NMFS has extended to some species. NMFS “species of concern” are defined as those species about which we have some concerns regarding status and threats, but for which insufficient information is available to indicate a need to list the species under the ESA (69 FR 19975, April 15, 2004). Under SARA, a threatened species is defined as “a wildlife species that is likely to become an endangered species if nothing is done to reverse the factors leading to its extirpation or extinction” (S.C. 2002, c. 29). A threatened species is defined in section 3 of the ESA as “...any species which is likely to become an endangered species within the foreseeable future throughout all or a portion of its range” (16 U.S.C. 1532(3)). While similar, these definitions are not equivalent and require interpretations of different terms. Furthermore, the processes and standards by which species are evaluated under each statute are not the same. Thus, while the “special concern” status under SARA is an indication that the SJRSS is not at immediate risk of extirpation, it remains unclear what status may be warranted for an SJRSS DPS under the ESA.

The 2005 COSEWIC assessment states that incidental bycatch in fisheries, poaching, and habitat loss and degradation are threats to the SJRSS. The petition provides no data or references with which to evaluate the level or trends in bycatch or poaching. Habitat loss and degradation occur in the form of dams, impoundments, and water quality impacts stemming from urban,

agricultural and industrial activities (COSEWIC 2005). The petition states that the largest threat to the SJRSS may be the Mactaquac Dam, which was completed in 1967 and is impassable by sturgeon. No studies have been conducted to evaluate the effect of the dam on spawning as a consequence of changes in water flow or temperature (COSEWIC 2005). Aboriginal knowledge also suggests that there has been a decline in the SJRSS since the Mactaquac Dam was constructed (COSEWIC 2005). There have also been no evaluations of the impact of contaminants on shortnose sturgeon in the SJR (COSEWIC 2005). However, water quality in the SJR, while still a significant concern in some areas, has improved since 2000, and many fish communities are healthy and stable (CRI 2011). The majority of the watershed is forested, and all municipalities, which are mostly small, now have sewage treatment capabilities (COSEWIC 2005). Overall, the information provided regarding threats to the SJRSS within its riverine and marine habitats is limited and difficult to fully assess.

The only comprehensive population estimate available for consideration in connection with this finding for the SJRSS population comes from Dadswell's (1979) mark-recapture study in 1973-1977. Dadswell (1979) calculated a Jolly-Seber population estimate of 18,000 ($\pm 30\%$) adults. Thus, the overall population trend is "unknown" (COSEWIC 2005). However, some evidence suggests the population has remained fairly stable since the 1970's. Size distributions and growth rates for sturgeon sampled in the SJR during 1998-2000 are similar to those measured and estimated for sturgeon sampled in 1973-1977 (COSEWIC 2005). Both time periods indicate a broad range of size and age-classes. A possible indicator of the stability of the SJRSS mentioned in the petition is the stable catch of adult shortnose sturgeon in a 26-year old annual fishing derby on the Kennebecasis River, a tributary of the Saint John. Catch records or

some assessment of the catch records from this tournament were not provided in the petition or supporting references, so this statement is difficult to verify at this time. More recent studies conducted in overwintering areas have produced partial adult population estimates of $4,836 \pm 69$ in 2005 and 3,852–5,222 in 2009 and 2011, indicating persistence at the overwintering sites over this time period and suggesting stable abundance (Li *et al.* 2007; Usivyatsov *et al.* 2012).

Interestingly, the range of the SJRSS has also recently been scientifically recognized as extending to include the waters off of Nova Scotia: Dadswell *et al.* (2013) recently confirmed the presence of an adult shortnose sturgeon in the Minas Basin, which is about 165 km from the mouth of the SJR. Fishers also report that they have been catching 1-2 shortnose sturgeon in their weirs during the past decade (Dadswell *et al.* 2013). Lastly, Stokesbury *et al.* (2014) used an index called the “Species Ability to Forestall Extinction Index,” or SAFE index, to characterize the SJRSS risk of extinction and concluded that this population was above the authors’ particular threshold for “threatened,” which was based on an assumed minimum viable population of 5,000 adults. Because there have been no comprehensive surveys of the SJRSS since the 1970s, Stokesbury *et al.* (2014) also assumed an adult population size of 18,000 based on the 1973-1977 study by Dadswell (1979) in order to calculate the index for the SJRSS. Overall, while data are lacking with respect to current population abundance and trends, the available evidence suggests that the population has remained stable since the 1970s and is not at high risk of extirpation.

In summary, we find that the shortnose sturgeon within the Saint John River in New Brunswick, Canada, may meet the “discreteness” and “significance” criteria of the DPS Policy (61 FR 4722, February 7, 1996) and thus may qualify as a DPS. We also find that, given the available information regarding the seemingly stable and thus potentially sufficiently high

abundance of the shortnose sturgeon in the SJR, the SJRSS, if considered on its own, may not meet the criteria for listing under the ESA. Revisions to the current species-level listing for shortnose sturgeon therefore may be warranted, if we determine it would best further the purposes of the ESA. While there is substantial uncertainty regarding the current population size, trends, and threats, we conclude that the petition and references provide sufficient indication that the petitioned action may be warranted.

Petition Finding

After reviewing the information contained in the petition, as well as information readily available in our files, we conclude that the petition presents substantial scientific or commercial information indicating the petitioned actions may be warranted for the SJRSS. We hereby announce the initiation of a status review to determine whether the petitioned population meets the DPS criteria and whether the current species-level listing should be revised.

Information Solicited

To ensure that the status review is based on the best available scientific and commercial data, we are soliciting information relevant to the petitioned actions. Specifically, we are soliciting data and information, including unpublished data and information, in the following areas: (1) recent genetic analyses of populations of shortnose sturgeon; (2) current distribution and abundance of shortnose sturgeon range-wide; (3) movements, migratory patterns and habitat use of shortnose sturgeon along the northeast coast of the United States and in Canadian waters; (4) historical and current population trends for shortnose sturgeon within the Saint John River; (6) past, current and future threats, including bycatch rates and any current or planned activities that may adversely impact the SJRSS; (7) ongoing or planned efforts to protect and restore the

SJRSS and their habitat; and (8) management, regulatory, and enforcement information. We request that all information be accompanied by: (1) supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

References Cited

A complete list of references is available upon request to the Office of Protected Resources (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 31, 2015

Eileen Sobeck
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

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